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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 WILLIAM H. BAKER,

11 Plaintiff,

12 v.

13 THE PHOENIX INSURANCE
14 COMPANY,

15 Defendant.

CASE NO. C12-1788JLR

ORDER ON MOTION FOR
PARTIAL SUMMARY
JUDGMENT

16 Before the court is Plaintiff William H. Baker's Motion for Partial Summary
17 Judgment on Coverage. (Mot. (Dkt. # 37).) This is an insurance coverage dispute
18 between Mr. Baker and Defendant The Phoenix Insurance Company ("Phoenix"). Mr.
19 Baker was rear-ended on I-90 by a motorist who did not have enough money or insurance
20 to pay all of Mr. Baker's medical bills. When Mr. Baker made an insurance claim with
21 Phoenix, Phoenix told him that he was not covered for Uninsured-Underinsured Motorist
22 ("UIM") benefits. Phoenix denied his claim despite the fact that an endorsement to his

1 insurance policy said that Mr. Baker's truck was covered for UIM and Medical Payments
 2 coverage ("MedPay"). Mr. Baker now argues, among other things, that the endorsement
 3 creates an ambiguity in the contract that under Washington law must be resolved in his
 4 favor. The court agrees and GRANTS Mr. Baker's motion.¹

5 **I. BACKGROUND**

6 Mr. Baker made a UIM claim with Phoenix after he was rear-ended on I-90 by an
 7 uninsured/underinsured² motorist named Sameer Mohamed. (Compl. (Dkt. # 1-2) ¶¶ 4.1-
 8 4.3.) Mr. Mohamed's car hit Mr. Baker's 1993 Dodge truck from behind, pushing Mr.
 9 Baker's truck into the car directly ahead of Mr. Baker. (*Id.* ¶¶ 4.3-4.5.) The parties do
 10 not dispute that Mr. Mohamed was the sole cause of the accident. The truck was
 11 registered in Mr. Baker's name, but it was not insured in his name. (Shoemaker Decl.
 12 (Dkt. # 15-4) Ex. D at 3, 7.) Instead, it was insured by a company owned by Mr. Baker's
 13 adult son, William S. Baker (hereinafter "WSB") under a Commercial General Liability
 14 ("CGL") policy of that company, Bibb Construction LLC ("Bibb"). (*Id.* at 7; *Id.* Ex. A.)

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 16 ¹ Phoenix has requested oral argument, but the court denies this request. Oral argument
 17 is not necessary where the non-moving party would suffer no prejudice. *Houston v. Bryan*, 725
 18 F.2d 516, 517-18 (9th Cir. 1984). "When a party has [had] an adequate opportunity to provide
 19 the trial court with evidence and a memorandum of law, there is no prejudice [in refusing to
 20 grant oral argument]." *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998) (quoting *Lake at*
Las Vegas Investors Grp., Inc. v. Pac. Malibu Dev. Corp., 933 F.2d 724, 729 (9th Cir. 1991))
 (alterations in *Partridge*). "In other words, a district court can decide the issue without oral
 argument if the parties can submit their papers to the court." *Id.* Here, the issues have been
 thoroughly briefed by the parties and oral argument would not be of assistance to the court.
 Accordingly, the court will not hold oral argument

21 ² The Complaint does not make clear whether Mr. Mohamed was underinsured or
 22 uninsured, describing him as "underinsured and possibly uninsured," and
 "underinsured/uninsured." (Compl. ¶¶ 4.3, 4.5.) It makes no difference to this motion whether
 Mr. Mohamed was underinsured or uninsured.

Phoenix denied Mr. Baker's UIM claim, informing him that he had no UIM coverage under Bibb's policy. (*Id.* Ex. F.) Phoenix informed Mr. Baker that, although Bibb's policy included \$1,000,000.00 of UIM coverage, this coverage only applied to automobiles owned by Bibb. (*Id.*) Phoenix told Mr. Baker that since he, not Bibb, owned the 1993 Dodge, it was not covered by Bibb's policy. (*Id.*) Accordingly, Phoenix denied Mr. Baker's UIM claim entirely. (*Id.*)

But things are not as simple as Phoenix claims. It is true that Bibb's policy originally provided UIM coverage only for autos owned by Bibb. (*See id.*) However, before the accident, WSB contacted his insurance agent to add the 1993 Dodge to the policy. (WSB Decl. (Dkt. # 19-1) ¶¶ 4-5.) Phoenix agreed to add the Dodge and issued an endorsement to the policy that named it as an insured auto. (*See* Shoemaker Decl. Ex. B.) The endorsement showed that the 1993 Dodge was covered for UIM benefits (among other coverages) and that Phoenix would collect a premium for UIM coverage. (*Id.* at 6.) Phoenix did collect this premium. (WSB Decl. ¶ 6.)

Mr. Baker moves for summary judgment, asking the court to declare that he is entitled to UIM and MedPay benefits under the policy. Phoenix opposes the motion and cross-moves for summary judgment, asking the court to dismiss Mr. Baker's arguments.

II. ANALYSIS

A. Summary Judgment Standard

Summary judgment is appropriate if the evidence, when viewed in the light most favorable to the non-moving party, demonstrates "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.

1 P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cnty. of L.A.*,
2 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing
3 there is no genuine issue of material fact and that he or she is entitled to prevail as a
4 matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets his or her burden, the
5 non-moving party “must make a showing sufficient to establish a genuine dispute of
6 material fact regarding the existence of the essential elements of his case that he must
7 prove at trial.” *Galen*, 477 F.3d at 658. The court is “required to view the facts and draw
8 reasonable inferences in the light most favorable to the [non-moving] party.” *Scott v.*
9 *Harris*, 550 U.S. 372, 378 (2007).

10 **B. Mr. Baker is Entitled to Summary Judgment on UIM and MedPay Coverage**

11 1. There are no genuine disputes of material fact germane to this motion

12 There are many disputed facts in this case, but none that need to be resolved
13 before the court can decide the underlying coverage questions. Interpretation of an
14 insurance contract is a question of law. *State Farm Gen. Ins. Co. v. Emerson*, 687 P.2d
15 1139, 1141-42 (Wash. 1984). Mr. Baker has asked the court to interpret the terms of the
16 contract to determine whether there is coverage. There is no dispute among the parties
17 with respect to any fact that bears on this question of contract interpretation. Thus, Mr.
18 Baker has met his initial burden of showing there is no genuine dispute of material fact.
19 *See Celotex*, 477 U.S. at 323.

1 2. Mr. Baker is entitled to judgment as a matter of law

2 Mr. Baker makes five different arguments for why he is entitled to judgment as a
3 matter of law. The court focuses on the one that has the most merit and, finding that
4 argument persuasive, does not address the others.

5 Mr. Baker argues, and the court agrees, that the insurance contract at issue here is
6 ambiguous with respect to whether it provides UIM and MedPay coverage. A contract is
7 ambiguous when, on its face, it is fairly susceptible to two different interpretations, both
8 of which are reasonable. *Weyerhaeuser Co. v. Comm. Union Ins. Co.*, 15 P.3d 115, 122
9 (Wash. 2000). Here, the contract is ambiguous because the original policy suggests one
10 reasonable interpretation (there is no coverage) while the endorsement to the policy
11 suggests another (there is coverage).³ As the court previously held, the original policy,
12 absent the endorsement, does not provide UIM coverage:

13 [U]nder the terms of the original policy (not including the endorsement),
14 Mr. Baker has no UIM coverage. Mr. Baker does not seriously dispute this
15 fact, nor could he. (*See* 2d Resp. (Dkt. # 18) at 4-8.) The policy plainly
16 provides UIM coverage for “Owned autos only,” which is defined in
17 relevant part as “[o]nly those ‘autos’ you own.” (Shoemaker Decl. Ex. A at
18 11, 20.) The “you” in that definition is the named insured, Bibb. (*See, e.g.,*
19 *id.* at 3.) Bibb did not own the 1993 Dodge at the time the policy issued or
20 at the time of the accident; Mr. Baker did. This fact is not disputed. Thus,

21 ³ It is true that endorsements, coming later in time, usually control over terms or
22 conditions in the policy where there is inconsistency. *Transcontinental*, 760 P.2d at 343. Here,
both sides argue that the policy, by its plain language, supports their interpretation. Thus,
arguably, the endorsement should control because it came later in time. This argument raises
several additional issues that the court deems it unnecessary to address. Because there is no
doubt that the contract is, at a minimum, ambiguous, and because this resolves the issue before
the court, the court does not address the question of whether the policy and the endorsement,
read as a whole, are “inconsistent” rather than merely susceptible to two reasonable
interpretations.

1 the original policy provides no UIM coverage for Mr. Baker or his 1993
2 Dodge because the 1993 Dodge was not an “owned auto.”

3 (3/5/13 Order (Dkt. # 23) at 4-5.) This reasoning applies to MedPay coverage as well.

4 On the other hand, the endorsement to the policy suggests that there is coverage. (*See*
5 Shoemaker Decl. Ex. B.) Endorsements become part of the insurance contract even if the
6 result is a new and different contract. *Transcontinental Ins. Co. v. Wash. Pub. Utils. Dist.*
7 *Util. Sys.*, 760 P.2d 337, 343 (Wash. 1988). Endorsements must be read together with the
8 policy to determine the intent of the parties. *Id.* Here, the endorsement lists the 1993
9 Dodge as an insured auto and states that the Dodge is covered for UIM and MedPay
10 benefits. (Shoemaker Decl. Ex. B at 6.) The endorsement further states that Phoenix
11 intended to collect a premium for UIM coverage. (*Id.* at 6.) There is no dispute that
12 Phoenix did, in fact, collect this premium. (WSB Decl. ¶ 6.) Both of these are
13 reasonable interpretations, and neither completely overrides the other. One interpretation
14 suggests there is coverage, and the other suggests there is no coverage. As such, the
15 policy is ambiguous with respect to whether Mr. Baker is covered for UIM and MedPay
16 benefits.

17 Under Washington law, where an insurance policy is ambiguous, courts must
18 resolve the ambiguity in favor of the insured. *Am. Nat. Fire Ins. Co. v. B&L Trucking &*
19 *Const. Co., Inc.*, 951 P.2d 250, 256 (Wash. 1998); *Morgan v. Prudential Ins. Co. of Am.*,
20 545 P.2d 1193, 1195 (Wash. 1976). Courts may not strain to find an ambiguity in an
21 insurance contract where none exists, nor may they modify clear and unambiguous
22 language in a policy in the guise of construing the policy. *Farmers Home Mut. Ins. Co. v.*

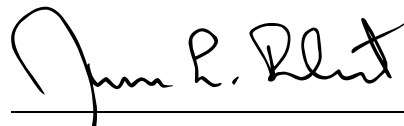
1 *Ins. Co. of N. Am.*, 583 P.2d 644, 647 (Wash. Ct. App. 1978); *Britton v. Safeco Ins. Co. of*
2 *Am.*, 707 P.2d 125, 132 (1985). But that has not happened here. Here, there can be little
3 doubt that the policy is susceptible to two reasonable interpretations.

4 Accordingly, the court construes the policy in Mr. Baker's favor and, as such, he is
5 entitled to UIM and MedPay benefits under the policy. Phoenix makes only one
6 argument to the contrary, which is that the document is only subject to one reasonable
7 interpretation. The court rejects this argument for the reasons explained above.

8 **III. CONCLUSION**

9 For the foregoing reasons, the court GRANTS Mr. Baker's Motion for Partial
10 Summary Judgment (Dkt. # 37). Mr. Baker is entitled to UIM and MedPay coverage
11 under the policy. For the same reasons, the court dismisses Phoenix's counterclaim for
12 reimbursement of MedPay benefits. Finally, Phoenix has nominally incorporated a
13 "Cross Motion for Partial Summary Judgment" into its response brief, arguing that the
14 court should dismiss the arguments made in Mr. Baker's motion. (Resp. (Dkt. # 38) at
15 1.) It is not clear what relief Phoenix seeks beyond denial of Mr. Baker's motion, but in
16 any event the court DENIES the cross motion for the reasons described above.

17 Dated this 3rd day of September, 2013.

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21 JAMES L. ROBART
22 United States District Judge